

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Daily News, LP; Chicago Tribune Company, LLC;
Orlando Sentinel Communications Company, LLC;
Sun-Sentinel Company, LLC; San Jose Mercury-
News, LLC; DP Media Network, LLC; ORB
Publishing, LLC; and Northwest Publications, LLC,

Plaintiffs,

v.

MICROSOFT CORPORATION, OPENAI, INC.,
OPENAI LP, OPENAI GP, LLC, OPENAI, LLC,
OPENAI OPCO LLC, OPENAI GLOBAL LLC,
OAI CORPORATION, LLC, and OPENAI
HOLDINGS, LLC,

Defendants.

Case No. 1:24-cv-03284-SHS

**PLAINTIFFS' RESPONSE TO THE OPENAI DEFENDANTS' NOTICE OF
SUPPLEMENTAL AUTHORITY (DKT. 200)**

Plaintiffs Daily News, LP (the “New York Daily News”); The Chicago Tribune Company, LLC, (the “Chicago Tribune”); Orlando Sentinel Communications Company, LLC (the “Orlando Sentinel”); Sun-Sentinel Company, LLC (the “Sun-Sentinel”); San Jose Mercury-News, LLC (the “Mercury News”); DP Media Network, LLC (the “Denver Post”); ORB Publishing, LLC (the “Orange County Register”); and Northwest Publications, LLC (the “Pioneer Press”) (collectively the “Publishers”), by and through their undersigned counsel, respectfully submit this response to the Notice of Supplemental Authority filed by the OpenAI Defendants (Dkt. 200).

The November 7, 2024, decision by the Court in *Raw Story Media, et al. v. OpenAI, Inc., et al.*, No. 24-cv-01514 (S.D.N.Y.) (McMahon, J.), is inapposite to the Publishers’ claims in this action and provides no meaningful guidance with respect to the pending motions. Raw Story alleged only a violation of 17 U.S.C. § 1202(b)(1). The Complaint in this action alleges violations

of § 1202(b)(1) and § 1202(b)(3). Dkt. 1 at ¶ 223 (based on OpenAI’s creation and distribution of derivative works without Plaintiffs’ copyright management information), as well as non-DMCA claims. The Court dismissed the Raw Story Plaintiffs’ claims pursuant to 17 U.S.C. § 1202(b)(1) of the Digital Millenium Copyright Act (“DMCA”) based on OpenAI’s “removal of copyright management information (“CMI”) from Plaintiffs’ works” prior to training ChatGPT. *See* Dkt. 200-2. The Court found that the Raw Story Plaintiffs did “not allege that a copy of their work from which CMI has been removed has been distributed by ChatGPT to anyone in response to a specific inquiry” and that the Raw Story Plaintiffs therefore lacked Article III standing to assert claims for damages and injunctive relief under Section 1202(b)(1). *See id.* at 7, 9. The Court remarked that that it was “not convinced that the mere removal of identifying information from a copyrighted work—absent dissemination—has any historical or common-law analogue.” *See id.* at 7 (emphasis added).

By contrast, in this case the Publishers have alleged not just that Defendants removed their CMI but that: (a) their content (without the CMI) was used “in building the training datasets containing copies of the Publishers’ works;” and (b) their content (without the CMI) was reproduced by Defendants in outputs that contained “verbatim reproductions of the Publishers’ Works.” Dkt. 1 at ¶¶ 218, 221. Moreover, the Complaint in this action contains specific examples of this dissemination, including ChatGPT, GPT-4 API and Bing Chat output in which the Publishers’ Works were reproduced verbatim but missing all the associated CMI. *See, e.g.*, Dkt. 1 at ¶¶ 102, 168; Ex. J at Examples 2 and 20.

Dated: November 13, 2024

Respectfully Submitted,

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